


## Memorandum

To : Honorable John Chiang, Chair  
Honorable Claude Parrish, Vice Chairman  
Ms. Betty T. Yee, Acting Member  
Honorable Bill Leonard  
Honorable Steve Westly

Date: June 10, 2005

From : Kristine Cazadd   
Chief Counsel, Legal Department

Subject: **Chief Counsel Matters - June 30/July 1, 2005 Board Meeting**

- Proposed Rule 140 - Welfare Exemption Requirements for Low-Income Housing Properties
- Proposed Rule 140.1 - Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties
- Proposed Rule 140.2 - Requirements for Supplemental Clearance Certificate for Limited Partnership for Welfare Exemption for Low-Income Housing Properties
- Proposed Rule 143 - Requirements for Irrevocable Dedication Clause and Dissolution Clause for Organizational Clearance Certificate for Welfare Exemption

Staff recommends that the Board approve for publication the referenced proposed Property Tax Rules 140, 140.1, 140.2 related to the welfare exemption for low-income housing properties under Revenue and Taxation Code<sup>1</sup> section 214, subdivision (g), and proposed Property Tax Rule 143 related to the requirements for qualifying irrevocable dedication and dissolution clauses for nonprofit organizations claiming the welfare exemption under section 214.

### **WELFARE EXEMPTION FOR LOW-INCOME HOUSING PROPERTIES**

Section 214, subdivision (g) provides the requirements for the welfare exemption for low-income housing properties. To summarize, that statute provides that properties used exclusively for low-income rental housing, which are owned and operated by certain qualifying organizations qualify for the welfare exemption if certain requirements are satisfied. The statute specifically provides that for-profit limited partnerships in which the managing general partner ("MGP") is an eligible nonprofit corporation or eligible limited liability company is a qualifying organization. Proposed Rules 140,

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<sup>1</sup> Unless otherwise specified, all statutory references are to the Revenue and Taxation Code.

140.1 and 140.2, interpret and define the requirements to qualify for the welfare exemption under section 214, subdivision (g).

**PROPOSED RULE 140 -Welfare Exemption Requirements For Low-Income Housing Properties (Exhibit 1)**

The proposed rule defines the terms “regulatory agreement,” “deed restriction,” “federal low-income tax credits,” “government financing,” “lower income households,” and “other legal document” as used in section 214, subdivision (g) with respect to the requirements for the welfare exemption for low-income housing properties. Under section 214, subdivision (g)(1)(A) and (B), property used exclusively for rental housing and related facilities owned and operated by religious, hospital, scientific, or charitable fund, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation or an eligible limited liability company meeting all of the requirements for the welfare exemption under section 214, or by qualifying veterans’ organizations described in section 215.1, are entitled to the welfare exemption if: (1) the owner of the property receives low-income housing tax credits or government financing for the particular property; and (2) the property is subject to a recorded deed restriction or a regulatory agreement which is recorded in the county in which the property is located. Additionally, section 214, subdivision (g)(1)(C) provides an alternative basis to qualify for the welfare exemption for low-income housing properties owned by qualifying nonprofit organizations, other than properties owned by limited partnerships with a nonprofit managing general partner, if 90 percent or more of the occupants of the property are lower income households whose rent do not exceed the rent prescribed by section 50053 of the Health and Safety Code; however, the total

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**Irrevocable Dedication Clause and Dissolution  
Exemption for Welfare Exemption (Exhibit 1)**

Qualifying irrevocable dedication and dissolution  
is a prerequisite for obtaining the organizational

**PARTIES PROCESS**

Interested parties process for the proposed welfare  
exemption and other interested parties for clear guidance  
exemption for low-income housing properties, in  
a nonprofit MGP of a limited partnership, in particular.  
In this process, staff has held two interested parties  
meetings and the second was held on May 11, 2005.

At the meeting, staff and interested parties resolved all of  
issues 140.2, and 143. The only unresolved issues relate to  
a MGP of a limited partnership.

At the parties meeting, staff posted on the Board's website the  
rules attached hereto as Exhibit 1. Staff also  
discussed, with respect to proposed Rule 140.1 for  
a MGP; (2) definition of MGP's substantial  
application (i.e., retroactive or prospective-only application).

Regarding comments on proposed Rule 140.1, 21 of which  
are part of the proposed rule (see Exhibit 9 for a list of  
part of staff's draft of proposed Rule 140.1). The  
comments, suggest alternative language to staff's draft of

***table services or benefits or information  
for low-income housing tenants.***

Low-income housing tenants is not an express statutory  
requirement and therefore, the MGP should not be required to  
provide, staff does not require the provision of  
exemption for low-income housing properties due  
to the nature of the organization.

**and Los Angeles County Assessor's Positions**

The assessor recommend more tightly written  
rules for properties owned and operated by limited partnerships

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The definition of MGP should require the MGP to benefit the low-income housing

and provide that the MGP:

such as vocational training, educational programs, cultural activities, and family counseling

#### DUTIES

*that the MGP performs 2 or more of any of*

the 11 substantial management duties listed in which duties it agrees to perform. As presently MGP must perform 2 or more of 19 listed and rule eliminates and consolidates some of

Exhibit 4):

the MGP must ensure that the property is not the subject of any action of the governmental agencies that have the authority to delete or recommends deleting the list of 11 duties and requires the MGP to perform both of the following 2 duties:

operations and management of the low-income housing properties delegated to a property management agent, or a property management agent; and

regulations and the filing or supervision of the documents with government agencies.”

requirement for low-income housing properties owned by a nonprofit MGP. It recommends deleting the requirement and requiring the MGP to perform both of the

operations and management of the low-income housing properties delegated to a property management agent, or a property management agent; and

regulations and the filing or the documents with government agencies.”

A recommends that if the Board elects to keep the list of 11 duties in (b)(1) from which the MGP may elect which duties it agrees to perform, CAA the MGP be required to perform more than 2 of the 11 listed duties.

Comments' Position (see Exhibit 5):

A recommends adding the provision of charitable services or providing charitable services to low-income housing tenants to the list of management duties. The MGP will then have 12 duties from which it can choose

In addition of proposed Rule 140.1, subdivision (a)(10)(xii):

"providing charitable services or benefits, such as vocational training, educational and after school programs, cultural activities, family counseling, meals, and linkages to health and/or social services are provided or regarding charitable services or benefits are made available to the low-income tenants."

A also recommends a stricter definition of substantial management duties requiring the MGP to perform 4 of the 12 listed duties, provided that the regulation applies to partnerships formed after the effective date of the regulation (see Issue 3)

that subdivision (a)(10) provide that:

"management duties" means that the managing general partner actually performs four or more of the following partnership management duties on behalf of the partnership."

Managing Partnership Corporation's Position (see Exhibit 6):

Managing Partnership Corporation recommends a stricter definition of substantial management duties by requiring the MGP to perform 8 of the 11 listed duties. It believes that a list of 11 duties is inadequate because the MGP could merely execute and prepare documents and cause reports for partners and lenders to be prepared.

that subdivision (a)(10) provide that:

"management duties" means that the managing general partner actually performs eight or more of the following partnership management duties on behalf of the partnership."

6. Community Economics, Inc.s' Position (see Exhibit 7):

Community Economics, Inc. recommends a stricter definition of substantial management duties by requiring the MGP to perform all 11 of the listed duties. It believes that requiring all 11 duties will address the widespread belief that there is abuse in the current system.

It recommends that subdivision (a)(1) provide that:

“‘Substantial management duties’ means that the managing general partner actually performs all of the following partnership management duties on behalf of the limited partnership.”

7. Santa Clara County Assessor (see Exhibit 8):

The Santa Clara County Assessor believes that by allowing a MGP to perform only 2 of 11 substantial management duties, the regulation will institutionalize the increasing number of “sham” transactions in which the MGP is merely a “shell” for the limited partnership. Accordingly, the assessor recommends that the Board not adopt proposed Rule 140.1 and the welfare exemption for low-income housing should remain as it is currently administered. In the alternative, the assessor recommends that the Board support a constitutional amendment to allow nonprofit organizations that partner with for-profit developers to receive the property tax exemption, regardless of their level of management responsibility.

**ISSUE 3 – COMPLIANCE PERIOD**

**Proposed Rule 140.1, subdivision (f):**

***Whether Proposed Rule 140.1 should apply prospectively to new partnerships formed after the effective date of the regulation.***

1. Staff's Position (see Exhibit 1):

Proposed Rule 140.1 should apply prospectively to claims for the welfare exemption or applications for a SCC filed on or after the effective date of the regulation. For SCCs issued prior to the effective date of the regulation, claimants must be in compliance with the regulation by the January 1, 2007 lien date unless the Board has issued a written notice of noncompliance, in which case claimants will have 90 days from the date of the notice of noncompliance to comply with the regulation. Upon written request for an extension of time prior to the expiration of the 90-day period, the Board will grant a reasonable amount of time to comply with the regulation.

2. Community Investments' Position (see Exhibit 5):

Community Investment recommends that proposed Rule 140.1 should only apply to limited partnerships formed after the effective date of the regulation and should not apply to previously formed limited partnerships even on a prospective-only basis. It explains that existing projects followed the requirements for the welfare exemption as presently administered to obtain loans and equity investments from third-party lenders and investor limited partners. Some of these projects may have slim margins, and little or no cash flow above debt service, and therefore, the requirements to qualify for the welfare exemption should not be changed for such projects.

### **OTHER COMMENTS**

In addition to the three issues discussed above, staff received comments from two organizations regarding proposed Rule 140.1, subdivision (a)(5) and comments from one organization regarding subdivision (a)(6) and (a)(7).

1. **Definition of “Majority in Interest of the General Partners”**  
**Proposed Rule 140.1, subdivision (a)(5)**

Staff’s Position (see Exhibit 1):

“Majority in interest of the general partners” means more than 50 percent of the interests of the general partners, and does not include the interests of any of the limited partners, in the current profits derived from business operations of the limited partnership.

Staff’s language is adapted from the California Revised Limited Partnership Act, Corporations Code section 15611, subdivision (t), which provides that “Majority in interest of all partners’ means more than 50 percent of the interest of all partners” and subdivision (o), which provides that “Interest of all partners’ means the aggregate interest of all partners in the current profits derived from business operations of the partnership.”

Community Economics, Inc.’s Position (see Exhibit 7):

Community Economics, Inc. believes that the MGP should have a controlling interest in the limited partnership.

It recommends that subdivision (a)(5) provide that:

“Majority in the managing general partner’ means more than 50 percent of the ownership interest, profits, losses, gain, and cash distribution of the general partners, in the ownership interest, profits, losses, gain and cash distributions derived from the business operations of the limited partnership.”

California Housing Partnership Corporation’s Position (see Exhibit 6):

Community Housing Partnership Corporation believes that the MGP should be a meaningful participant in the limited partnership.

It recommends that subdivision (a)(5) provide that:

“Majority in interest of the general partners’ means more than 50% of the interests of the general partners in the current ownership interest, profits, losses, gain, and cash distributions derived from the business operation of the limited partnership, and does not include the interest of any limited partners.”

**er – Management Fee****)(ii)**

er requirements, the MGP must be authorized to  
r similar form of compensation for performing its  
he compensation should be determined by the  
structuring the projects according to the various

**tion's Position (see Exhibit 6):**

tion believes that the current language allows the  
ttle as \$1 per year calling into question whether the  
at all.

provide that the MGP:

p management fee commensurate with its role as  
tent with industry norms in California.”

**7)(i)**

r decisions as defined in subdivision (a)(8), thereby  
major decisions made by the limited partnership.

**tion's Position (see Exhibit 7):**

tion believes that in order to be the MGP, the  
majority vote in all major decisions.

provide that the MGP:

ons,' defined in subdivision (a)(8) below;”

**er****(6)****tion's Position (see Exhibit 6):**

tion recommends adding three new subdivisions to

al as defined in IRC Section 42.”

California Housing Partnership Corporation believes that adding this subdivision will ensure that the benefit of the tax exemption will be preserved beyond the 15-year tax credit compliance period.

Add New Subdivision (a)(6)(iv):

MGP, "to the extent there is any cash flow available after payment of all project expenses, debt service, reserves, deferred developer fee and partnership management fee, receives an incentive management fee consistent with industry norms in California and in no event less than 25% of the remaining cash flow."

California Housing Partnership Corporation believes that incentive management fees are critical to provide motivation to the MGP to ensure that the low-income housing project operates as efficiently as possible.

Add New Subdivision (a)(6)(v):

MGP "employs personnel qualified and in a number reasonably sufficient to perform the required substantial management duties for all of the properties under its supervision."

California Housing Partnership Corporation believes that this will ensure that the MGP is actually performing its management duties.

### **REVENUE IMPACT**

No revenue loss resulting from the adoption of the proposed rules is anticipated. The definition of MGP of a limited partnership in proposed Rule 140.1 is more specific than the current definition of MGP as presently administered. Additionally, the requirements of a qualifying irrevocable dedication clause and dissolution clause under proposed Rule 143 reflect statutory requirements as presently administered. Therefore, the proposed rules do not expand the welfare exemption.

### **COST IMPACT**

There is no cost impact to the Board as a result of the adoption of the proposed rules.

### **CONCLUSION**

Staff recommends that the Board approve staff's draft of the proposed welfare exemption rules and authorize that a public hearing be scheduled, in order to proceed with the rule-making process. Proposed Rule 143 will clarify the requirements for irrevocable dedication and dissolution clauses under sections 214, subdivision (a)(6) and 214.01. Additionally, proposed Rules 140, 140.1 and 140.2 will provide clear guidance to for-profit and nonprofit developers, lenders, and tax credit investors, as well as the county assessors and the Board's staff as to the

requirements to qualify for the welfare exemption for low-income housing properties under section 214, subdivision (g), thereby promoting clarity and consistency in the administration of the welfare exemption.

The staff's draft of the proposed rules for the welfare exemption for low-income housing, while providing more specific set of requirements than currently administered, provide flexibility to the low-income housing community to allow nonprofit organizations working with developers, lenders, and investors so that the low-income housing industry can structure their transactions according to the various business models consistent with the legislative intent to promote the production of low-income housing in California.

If you have any questions on this matter, please contact Ms. Selvi Stanislaus, Acting Assistant Chief Counsel, at (916) 324-2579, or Supervising Tax Counsel Sophia Chung at (916) 445-8485.

KEC:jlh

**Attachments**

Rules/140, 140.1, 140.2, 143/Welfare.doc

cc: Mr. Ramon J. Hirsig, MIC:73  
Mr. David Gau, MIC:63  
Mr. Dean Kinnee, MIC:64  
Ms. Selvi Stanislaus, MIC:82  
Ms. Mickie Stuckey, MIC:62  
Mr. Stanley Siu, MIC:61  
Mr. Todd Gilman, MIC:70  
Ms. Anita Gore, MIC:86  
Ms. Sophia Chung, MIC:82

bc:	Ms. Marcy Jo Mandel	(Controller's Office)
	Mr. Steve Kamp	MIC:71
	Mr. Tom Hudson	MIC:78
	Mr. Neil Shah	MIC:77
	Ms. Audrey Noda	MIC:72

**PROPOSED  
THE POSITION  
OF.**

**SECTION 140**

**THE**

**PROVISIONS**

govern the construction of

owner is eligible for and  
to Revenue and Taxation  
123610.5 or federal low-  
income Housing Tax Credit Code.

distance from local, state or  
habilitation, construction,  
in the form of: (1) tax-  
bonds; (3) local, state or  
any loan insured, held, or  
received federal funding under  
"rental financing" does not  
include through tenant rent-  
7.

is a resolution or statement  
adopted by an organization's  
directors has delegated this  
restricts the property's use to  
units of the property are  
the households at rent levels

holds" as defined by section

encumbrance against title to  
the property is located,  
the is restricted to rental to  
is restricted to use as low-

affordable agreement with a  
tax credits or government  
development or operation of  
on of the property's usage  
agreement shall identify the

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, specify the maximum rent  
in which the property is  
finalized and recorded, the  
Credit Allocation Committee  
Cap Allocation Letter is

welfare exemption for low-  
rent in either (1) or (2) below

in 214, subdivision (g)(1) as  
which the managing general  
limited liability company, may  
that:

to or government

in or a regulatory agreement  
property is located.

imposed by an other legal  
requirements listed under Revenue  
qualifying organization, other  
partner is an eligible nonprofit  
for the welfare exemption  
in tax for a single claimant  
Revenue and Taxation Code

#### **MENT FINANCING.**

income housing tax credits or  
(a)(2), respectively, for the  
provision restricts the use of all  
funds even if the government  
allocation of the low-income  
government agency that is a  
to enforce compliance with the

exemption shall be granted  
which is made continuously  
holds at rents that do not  
and Safety Code, or, to the  
the deed restriction conflict

1 with section 50053, rents do not exceed those prescribed by such terms.  
2

- 3 (2) The percentage of the value of the property qualifying for the exemption is based on the  
4 actual use of the property for rental to lower income households for the qualifying rent,  
5 and is not limited to the percentage designated for use by lower income households in  
6 the regulatory agreement, recorded deed restriction, or other legal document. Units  
7 reserved for the resident property manager are included in the percentage of units that  
8 qualify for the exemption.  
9

1 THE LANGUAGE SET FORTH IN THIS DRAFT OF PROPOSED  
2 RULE 140.1 DOES NOT REFLECT OR REPRESENT THE POSITION  
3 OF THE BOARD OR ANY BOARD MEMBER.  
4

5 **DRAFT OF PROPOSED PROPERTY TAX RULE 140.1**  
6 **REQUIREMENTS FOR MANAGING GENERAL PARTNER**  
7 **OF LIMITED PARTNERSHIP FOR WELFARE EXEMPTION**  
8 **FOR LOW-INCOME HOUSING PROPERTIES**

9  
10  
11 (a) Definitions. The definitions set forth in this regulation shall govern the construction of  
12 Revenue and Taxation Code section 214, subdivision (g), which provides the requirements  
13 for the welfare exemption for low-income housing properties owned by a limited partnership  
14 in which the managing general partner is an eligible nonprofit corporation.  
15

16 (1) "General partner" means "general partner" as defined by section 15611, subdivision (n)  
17 of the Corporations Code.  
18  
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- 2) the substitute managing general partner meets all of the requirements of a managing general partner set forth in subdivision (a)(6) above.

Delegation of Authority Clause. If the limited partnership agreement contains a delegation of authority clause, such clause must provide either that:

- 1) the managing general partner may not delegate any of its substantial management duties defined in (a)(10) above; or
- 2) the managing general partner may delegate its substantial management duties, defined in (a)(10) above, to persons who, under its supervision, may perform such duties for the partnership subject to the supervision by the managing general partner. If the managing general partner elects to delegate one or more of its substantial management duties, the managing general partner must demonstrate that it is actually supervising the performance of the delegated duties.

Certification Requirements. The limited partnership must file for and receive a supplemental clearance certificate from the Board as provided in Regulation 140.2.

The provisions of this regulation shall apply prospectively to claims or applications for the self-exemption under Revenue and Taxation Code section 214 and supplemental clearance certificates under Regulation 140.2, filed on or after the effective date of this regulation. For supplemental clearance certificates issued prior to the effective date of this regulation, claimants shall have until the January 1, 2007 lien date to be in compliance with this regulation unless the Board has issued a written notice of noncompliance. If the Board has issued such notice, claimant shall have 90 days from the date of the notice to comply with this regulation. Upon written request for an extension of time prior to the expiration of the 90-day period to comply, the Board shall grant a reasonable amount of time to comply with this regulation.

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l partnership;

mail address of person signing the  
e Certificate;

number and the date of issuance to the  
tional Clearance Certificate has not been  
an application for an Organizational  
managing general partner;

h the limited partnership is seeking the  
e, and the date the limited partnership

de;

al partners in the limited partnership, if

ertificate of Limited Partnership, and, if  
Amendment to Certificate of Limited

public agency, or a copy of a recorded  
s the receipt of low-income housing tax  
d in Regulation 140; and

not owned by the limited partnership,  
hip's ownership of the improvements.

the Supplemental Clearance Certificate  
e assessor of the county in which the

n the limited partnership agreement no  
partner, as defined in Regulation 140.1,  
the partnership, the limited partnership  
alization and the assessor of the county  
ext succeeding annual filing deadline for

THIS DRAFT OF PROPOSED  
REPRESENT THE POSITION  
BOARD MEMBER.

PROPERTY TAX RULE 143  
IRREVOCABLE DEDICATION CLAUSE  
IN A WILL  
FOR A CHARITABLE PURPOSE  
EXEMPTION

1:

that in the organizational documents of a  
foundation, dissolution, or abandonment of the  
property will not inure to the benefit of any private  
person.

statement in the organizational documents of a  
property irrevocably dedicated exclusively to one or

articles of incorporation of a corporation, or the  
bylaws or regulations of a community chest, fund,  
or an act of Congress.

community chest, fund, foundation, nonprofit  
company, organized and operated exclusively  
for charitable purposes. Charitable purposes include  
Revenue and Taxation Code section 214,

hospital, scientific or charitable purpose.  
purpose as defined in Revenue and Taxation

charitable exemption provided in Revenue and  
articles specified therein, the property owned by  
dedicated exclusively to a qualifying purpose, and  
of the qualifying organization, the property  
except another qualifying organization. In  
organizational document of the qualifying organization  
, which meets the requirements set forth in  
which meets the requirements set forth in

property is deemed to be irrevocably dedicated  
to a qualifying organization's organizational

exclusively to a

in Revenue and  
e shall state that  
in section 214,  
and educational  
14.

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on (a)(1) above:

organization, its  
liabilities of this  
for a charitable,  
ue and Taxation

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liabilities of this  
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assets remaining  
corporation shall  
s organized and  
ax exempt status

assets remaining  
ganization, shall  
d exclusively for

not contain an  
requirements of  
qualify for the  
e section 254.6.  
ate for the fiscal

1 year for which the Organizational Clearance Certificate is requested on its application if the  
2 applicant amends its organizational documents and submits a certified copy of the  
3 amendment to the State Board of Equalization by the next succeeding lien date.  
4

- 5 (2) If, at the time of filing, applicant's organizational documents did not contain an irrevocable  
6 dedication clause and/or a dissolution clause which meets the requirements of subdivisions  
7 (c) and (d), respectively, and the applicant amends its organizational documents after the  
8 next succeeding lien date, an Organizational Clearance Certificate may be issued under  
9 Revenue and Taxation Code section 254.6 for the fiscal year following the lien date by  
10 which the applicant amends its organizational documents and submits a certified copy of the  
11 amendment to the State Board of Equalization.  
12
- 13 (3) If the applicant amends its articles of incorporation, the amended articles must be filed with  
14 the Secretary of State's office and an endorsed copy must be provided to the State Board of  
15 Equalization.  
16
- 17 (4) The county assessor may not approve a welfare exemption claim until the State Board of  
18 Equalization has issued an Organizational Clearance Certificate under Revenue and  
19 Taxation Code section 254.6.  
20  
21

**ADMINISTRATION  
GENERAL PARTNER'S  
MANAGEMENT DUTIES**

or more of the following duties:

on behalf of the partnership:

any interest in property;

cumber partnership assets, place title in the name

modify or extend any obligation;

ation of the partnership and all operational

ns;

rtner;

ations and file or supervise the filing of all  
s;

orts required by the lender;

be provided to the partners;

t, construction or rehabilitation of projects;

verage;

its with property management firms;

cessary for operation of the partnership business,  
ditors, attorneys and other professionals rendering

ance and repair.

t 2  
1 of 1

y 23, 2005

te Board of Equalization  
onorable John Chiang, Chair  
N Street  
ramento, CA 95814

Proposed Welfare Exemption Rule 140.1

ar Chairman Chiang:

At its executive board meeting on April 21, 2005 the California Assessors' Association (CAA) approved a position on the State Board of Equalization's draft Rule 140.1. Since then, after their interested parties meeting on May 11, the Board's staff has amended Draft Rule 140.1 which was not significantly different than the original draft Rule 140.1.

CAA continues to recommend more tightly written requirements for low income housing owned and operated by a limited partnership in which only the managing general partner is qualified for the welfare exemption. As a gift of public funds the welfare exemption for such low income housing must be administered in the same manner as any other welfare exemption – as a tax advantage that inures to the benefit of the targeted population.

For this reason we recommend that paragraph (a)(6) (iv) be reinstated and amended to read "ensures that charitable services or benefits, such as vocational training, educational programs, childcare and after school programs, cultural activities, and family counseling are provided." The rule should require the actual provision of services.

Revise the definition of "substantial management duties" in (a)(10) to require both of the following:

(i) actively participates in the day-to-day operations and management of the low-income housing property, or if such duties are delegated to a property management agent, participates in overseeing the work of the property management agent; and

(ii) monitors compliance with government regulations and the filing or supervision of filing of required documents with government agencies.

If the Board elects to keep the list of duties in paragraph (a)(10) from which the managing general partner may choose which it performs, then at least make the minimum list more than merely two. Given the current list, a managing general partner

1) execute and deliver partnership documents and 2) monitor compliance with government regulations and that partner's work is done. Not bad for an exemption that saves the limited partnership tens or hundreds of thousands of dollars and for which it would not qualify except that the managing general partner is an eligible 501(c)(3) organization.

As chair of the Association's Welfare Exemption Ad Hoc Subcommittee I remain available to answer any questions or discuss these issues with you or your staff. You may contact me at (951) 486-7444 or by email at [colt@co.riverside.ca.us](mailto:colt@co.riverside.ca.us).

Thank you for your consideration of our position.

Very truly yours,

Cathy Colt, Riverside County Assistant Assessor  
for R. Glenn Barnes, CAA President

OFFICE OF THE ASSESSOR  
COUNTY OF LOS ANGELES

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<http://assessor.co.la.ca.us>

RICK AUERBACH  
ASSESSOR

May 23, 2005

Chief  
and Standards Division  
Utilization  
CIC 64  
Area 94279

Under Los Angeles County Assessor Rick Auerbach's views on  
the managing general partner of a low-income housing  
regarding his remarks to this Rule, as he believes an appropriate rule in this  
to curb the abuses that have occurred while not decreasing the  
available for low-income housing.

should require that there are benefits to the residents of the property,  
the charitable aspect of the "Welfare Exemption" plus ensuring that the  
in a manner consistent with the regulations of the governmental  
provided loans, grants or tax credits.

By the California Assessors' Association, indeed more tightly written  
low income housing owned and operated by a limited partnership in  
managing general partner is qualified for the welfare exemption. As a gift  
welfare exemption for such low-income housing must be administered  
as any other welfare exemption – as a tax advantage that inures to the  
benefit of the population.

should be reinstated and amended to read "ensures that charitable  
such as vocational training, educational programs, childcare and after  
school activities, and family counseling are provided." The rule  
actual provision of services.

tion of "substantial management duties" in (a)(10) to require both of

rticipates in the day-to-day operations and management of the low-  
erty, or if such duties are delegated to a property management agent,  
eing the work of the property managements agent; and

compliance with government regulations and the filing or  
ng of required documents with government agencies.

adopted by the Board and the Board staff exercises its power to audit  
efully the abuses will end and low-income housing opportunities  
ornia. Please contact me if you have any questions at 213-974-3101  
[ten@co.la.ca.us](mailto:ten@co.la.ca.us).

Very truly yours,



GARY TOWNSEND  
Chief Deputy Assessor

GOON USA Realty Advisors, Inc.  
5 Sansome Street, 17th Floor  
San Francisco, CA 94111  
Tel: 415-983-5420  
Fax: 415-983-5558

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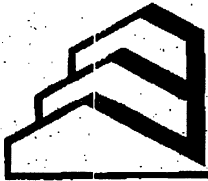
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CALIFORNIA  
HOUSING  
PARTNERSHIP  
CORPORATION

VIA FACSIMILE  
916-323-8765

May 23, 2005

Dean R. Kinnee, Chief  
Assessment Policy and Standards Division  
State Board of Equalization  
450 N Street/P.O. Box 942879  
Sacramento, CA 94279-0064

**Re: Proposed Property Tax Rule 140.1, and 140.2  
Implementing Revenue and Taxation Code 214(g)**

Dear Mr. Kinnee:

The California Housing Partnership Corporation was created by the state in 1988 to play a leadership role in affordable housing resource issues. CHPC is unique in combining transaction-based technical expertise with deep experience in affordable housing policy work. To date, CHPC has helped preserve and create more than 7,000 units of affordable rental housing and has contributed to numerous state, local and federal housing policies.

The welfare exemption plays a critical role in the financial feasibility all of the housing developments we have worked on and, when properly used, enables owners to serve people at deeper affordability levels for longer periods of time. We are aware, however, of a number of cases in which we believe the exemption is being used in ways that are not consistent with the intent of Revenue and Taxation Code Section 214(g) governing the use of the exemption by limited partnerships with a nonprofit managing general partner. We have also heard the Assessors from Los Angeles, Riverside and Santa Clara Counties provide compelling testimony at the BOE interested party meetings regarding what they believe to be abuses of 214(g). Specifically, the structuring of transactions so that the nonprofit general partner has no control, is not "managing" the partnership as required by the law, and is paid only a nominal sum simply for obtaining the exemption.

Despite widespread agreement in the industry that this rule-making process should focus on curbing these abuses, the proposed rules to be watered down to the point where, according to these assessors, they are worse than no rules at all because their weakness provides a cover for behavior inconsistent with 214(g) and will actually make it harder to prosecute abuses. For example, under the current draft of 140.1, a managing general partner may have no control over the partnership's decisions and can be paid \$1.00 per year for performing two of the eleven substantial management duties

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Page 2 of 4

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"partners" means  
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General Partner

*any cash flow available after  
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consistent with industry norms in  
cash flow."*

management fees are critical to  
to insure that the project  
operations that CHPC is aware of, the  
even any significant share of the  
the operations of the property,

General Partner

*qualified and in a number reasonably  
adequate for all of the properties under*

the Commission is intended to address the  
stated in the March 16<sup>th</sup>  
one of two people is serving as the  
partnerships controlling

*in all "major decisions," defined in*

the proposed language is again  
consistent in requiring that the  
partner. BOE staff recognized this in  
partnership have a majority vote.

*management duties" means that the  
the following partnership*

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May 23, 2005

Dean R. Kinnee, Chief

Assessment Policy and Standards Division

State Board of Equalization  
450 N Street/P.O. Box 942879  
Sacramento, CA 94279-0064  
Facsimile: 916-323-8765

**Re: Proposed Property Tax Rule 140.1, and 140.2**

Dear Mr. Kinnee,

Community Economics, Inc. is a 501(c)(3) organization that provides technical assistance to nonprofit and public agency affordable rental housing developers. We have provided financial and organizational consulting services on approximately 350 tax credit transactions.

The proposed rules clarify a number of areas and revise a number of sections which will make complying much more straight-forward than with the earlier drafts. However, the draft fails to address the widespread belief that there is abuse in the current system.

Under the current draft of 140.1 (a)(10), a managing general partner can have a contract to provide partnership services and receive only \$1 per year for these services. In addition, the

managing general partner needs to perform only two of the specified functions. I propose the following language:

"Substantial management duties" means that the managing general partner actually performs all of the following partnership management duties on behalf of the limited partnership:

Thank you for your efforts with regard to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joel Rubenzahl', written over a horizontal line.

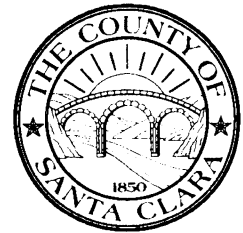
Joel Rubenzahl

cc: Ms. Ladeena Ford – State Board of Equalization

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Via E-mail and US Mail

Standards Division  
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ong opposition to proposed Rule 140, including the May 16 revisions. The proposed managing general partner (MGP) to perform any "substantial management duties" are essential for a developer to receive the property tax exemption.

managing general partner to perform only two of eleven management duties, the rationalize the increasing number of "sham" transactions in which the MGP is merely a tip. It would be possible for a nonprofit MGP to meet the provisions of the rule and or receive any compensation. In exchange, the for-profit affordable housing developer ial tax benefit in the form of a property tax exemption.

rule seeks to drop the standard for managing general partners so low as to be almost as proposed a rule in which the MGP's only substantive contribution to the property is to exemption. The Assessor's Handbook states, "A managing general partner of a limited all the statutory powers authorized to a general partner of a general partnership..." The me close to meeting that standard.

nd more for-profit developers of affordable housing are using nonprofits as little more e valuable property tax exemption. Last year the value exempted for nonprofit ed 25% to almost \$2 billion in Santa Clara County. The real losers are not only the mizations that provide needed affordable housing, but the schools, cities, and other on property tax revenue.

sham" rule designed to legitimize "sham" transactions. Rather than go through the ; this proposed rule, I would urge the Board to either drop the rule entirely and allow the push for a constitutional amendment to allow nonprofit organizations that partner with receive the property tax exemption, regardless of their level of management

**ORGANIZATIONS WHO PROVIDED COMMENTS  
IN SUPPORT OF STAFF'S DRAFT OF PROPOSED WELFARE RULES**

1. AOF/Pacific Affordable Housing Corp.
2. ARCS Commercial Mortgage
3. Brackenhoff Management Group, Inc.
4. Bridge Property Management
5. Community Housing Assistance Program, Inc.
6. Coastal Rim Properties
7. The Core Companies
8. Cox, Castel & Nicholson, LLP
9. Eagle Real Estate Group, LLC
10. Foundation for Social Resources
11. JSM Enterprises
12. Klein Financial Corp.
13. Law Offices of Patrick R. Sabelhaus
14. Meta Housing
15. MMA Financial
16. Related Capital
17. Resch Polster Albert & Berger LLP
18. RHC Communities
19. Silver Oak Land Company
20. Steadfast Companies
21. Suarez Accountancy Corporation

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